



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

AUG 14 2014

OFFICE OF
WATER AND WATERSHEDS

Ms. Nina Bell, Executive Director
Northwest Environmental Advocates
P.O. Box 12187
Portland, Oregon 97212-0287

Dear Ms. Bell:

Thank you for your July 17, 2014, letter stating your concerns with Oregon's water quality trading program. You have raised a number of issues surrounding the National Pollutant Discharge System permits that the Oregon Department of Environmental Quality (ODEQ) has issued that authorize the permittees to meet their temperature limits through purchasing temperature credits. Water quality trading -- especially trading between point sources and nonpoint sources -- continues to interest a wide range of stakeholders because of its potential to provide greater environmental benefits and at lower cost than technology-based controls alone. The Clean Water Act does not provide direction on how trading should be implemented, which can generate many questions about how trading programs should be designed so that they meet all the regulatory requirements that apply to NPDES permits.

Oregon first tested the concept of water quality trading with a pilot project: the 2005 Clean Water Services (CWS) permit.¹ This permit authorized CWS to create and use thermal load credits to offset thermal load in its discharge in order to meet permit limits. Although it isn't perfect, the CWS model illustrates what a leading municipal wastewater utility can do with significant in-house resources to draw upon. ODEQ's second effort at facilitating trading--the City of Medford permit--attempted to provide an example that would work for cities with limited resources. Its major deviation from the CWS model was to allow third parties to implement restoration projects in order to generate saleable credits, and thereby free up the permittee from direct involvement in the management of restoration projects. This is attractive to many permittees because all the work, be it restoration or plant upgrades, can be contracted out to a third party. However, the comments submitted by NWEA to ODEQ after the permit was issued, as well as the issues raised in your July 17 letter, show there are many important details to work out before the third-party trading model is used in NPDES permitting.

EPA Region 10 wants to see ODEQ strengthen its water quality trading program. It was for this reason that we provided substantive comments on the draft permit proposed for the City of Wilsonville. Unfortunately, Wilsonville withdrew its proposal for the modified permit before ODEQ could revise the permit and thereby show how it would respond to both our comments and yours. While we appreciate Wilsonville taking seriously its responsibilities as a permittee, we were nonetheless disappointed in its decision to install a cooling tower to meet its thermal load limit. We consider this a missed opportunity to have directed limited public dollars to meet water quality obligations through meaningful actions to reintroduce river-cooling natural processes.

¹ Oregon Department of Environmental Quality, NPDES Permit, Clean Water Service, Issue Date July 27, 2005.
<http://www.deq.state.or.us/wqpr/2114_A0907171247157194946.PDF>

We remain committed to working with ODEQ, as well as with the environmental agencies responsible for trading in Idaho and Washington, to develop functional and effective water quality-trading programs. We believe the "Regional Recommendations on Water Quality Trading" project funded by the Natural Resources Conservation Service grant being led by the Willamette Partnership and The Freshwater Trust is the best available resource to identify the critical elements of a successful trading program. The project also provides a valuable forum for regional water quality regulators to identify and discuss solutions for the difficult issues that will emerge as trading programs develop. The draft document ("Regional Recommendations") released August 7, 2014, for public input is an extensive set of recommended practices and elements for each state to consider when designing a water quality trading program, but it is by no means a blueprint or a manual for an off-the-shelf trading program. A considerable amount of hard work lies before Oregon to revamp its program, but we believe the draft Regional Recommendations document identifies options that may be helpful for them to address many of the issues you have identified.

As ODEQ continues to develop its water quality trading program, we will continue to urge them to replace their current Internal Management Directive approach with a more transparent process for establishing a rule or guidance and one that invites public comment and participation. The complexity of the issues to be considered will best be resolved through an open process where a variety of interests are represented.

I encourage you to actively participate in the process ODEQ establishes and to work with them to strengthen the state's water quality trading program. Your advocacy will be helpful in ensuring the necessary investment in the processes that are essential for water quality trading to deliver on its promise to provide greater and more cost effective environmental benefits than traditional infrastructure-based solutions.

Additionally, as part of its NPDES oversight responsibilities, EPA will continue to review Oregon's permits, including permits that enable water quality trading, as appropriate.

If you have questions, please feel free to call me at (206) 553-1855.

Sincerely,



Daniel D. Opalski, Director
Office of Water and Watersheds

cc: Mr. Dick Pederson, Director, Oregon Department of Environmental Quality